UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 1 3 2010

Colonel Alfred A. Pantano, Jr.
District Engineer
Department of the Army
Jacksonville District Corps of Engineers
Attn: Jeffery Collins
Cocoa Regulatory Office
400 High Point Drive, Suite 600
Cocoa, Florida 32926

Subject: Suburban Land Reserve; 2009-00948 (IP-JSC)

Dear Colonel Pantano:

This letter is in response to permit application number 2009-00948 (IP-JSC) submitted by Suburban Land Reserve. The applicant proposes to impact 148.4 acres of jurisdictional freshwater wetlands. The total site is 2,478 acres in size and contains 914.4 acres of wetlands and 1,563.6 acres of uplands. The purpose of the project is to construct a residential and commercial development. The on-site wetland communities consist of bay swamps, gum swamps, mixed wetland hardwoods, cypress (*Taxodium spp.*), pond pine hydric pine flatwoods (*Pinus serotina*), wetland forested mix, wetland scrub-shrub, and freshwater marshes. The acreage of each wetland community type was not listed in the public notice (PN). The proposed project is located on the southeast corner of State Road 528 and Boggy Ranch Road, in Sections 25 and 36, Township 23 South, Range 31 East; Section 31, Township 23 South, Range 32 East; Section 1, Township 24 South, Range 31 East; and Section 6, Township 24 South, Range 32 East, Orange County, Florida.

Proposed wetland impacts will occur within hydric pine flatwoods. The Environmental Protection Agency (EPA) considers hydric pine flatwoods systems to be aquatic resources of national importance (ARNI), because they are threatened habitats that provide nesting, resting, and feeding sites for a wide variety of wildlife species. Hydric pine flatwoods of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), red-cockaded woodpecker (*Picoides borealis*), eastern indigo snake (*Drymarchon corais*), gopher tortoise (*Gopherus polyphemus*), bald eagle (*Haliaeetus leucocephalus*), bobcat (*Lynx rufus*), Florida sandhill crane (*Grus canadensis pratensis*), and 900 native plant species including 80 rare and endemic species. Additional benefits include filtering upland runoff, stabilizing sediments, and taking up nutrients which help to improve the quality of nearby waters. Hydric pine flatwoods are rare outside south Florida, but are of critical, regional importance as one of the dominant forest cover types in south Florida. This geographically limited, subtropical habitat type has seasonal hydrologic variation, which results in a habitat with the highest plant diversity of any in south Florida. Despite the importance of this habitat type,

south Florida hydric pine flatwoods are among the least protected lands in Florida, with only nine percent in public ownership. Regionally, the loss of hydric pine flatwoods habitats of south Florida will critically affect the biodiversity and endemic flora and fauna of south Florida (U.S. Fish and Wildlife Service (FWS), 1999). For these reasons, EPA considers these hydric pine flatwoods to be ARNI.

Proposed direct and indirect impacts will also occur with cypress wetlands. We consider cypress wetlands to also be ARNI, because they provide nesting, roosting, and feeding sites for a wide variety of wildlife species. Cypress wetlands of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), eastern indigo snake (*Drymarchon corais*), bald eagle (*Haliaeetus leucocephalus*), wood duck (*Aix sponsa*), barred owl (*Strix varia*), and raccoon (*Procyon lotor*). In addition, cypress wetlands filter upland runoff and provide groundwater recharge of the aquifer when the adjacent water table drops during drought periods (FWS, 1999).

EPA, Region 4 has completed its review of this project from information contained in the PN. This letter summarizes EPA's position on the project, concentrating especially on Section 404(b)(1) Guidelines, which prohibit avoidable or significant adverse impacts to the aquatic environment.

In order to fully review the proposed project, EPA requests that the applicant provide information on alternative site locations that have been reviewed which would have less adverse impacts on the aquatic environment. Section 230.10(a) of the 404(b)(1) Guidelines states that no discharge of dredge and/or fill material (into waters of the United States, including wetlands) shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment, provided the alternative does not have other significant adverse environmental consequences. This regulation further states that for non-water dependent projects, practicable alternatives that do not involve special aquatic sites are presumed to be available. Practicable alternatives are those that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes." Therefore, EPA requests that the applicant provide this office with the following information for each site examined:

a. Presence, quantity and quality of wetlands;
b. County and/or city zoning;
c. Each land parcel's availability for purchase, and a determination of whether the proposed cost is reasonable;
d. The presence or absence of any federally listed plant or animal species and/or historical properties;
e. The presence or absence of high value uplands; and
f. Transportation access to the site.

EPA requests that the applicant provide information on measures that have been taken to avoid and minimize on-site wetland impacts. The applicant proposes to impact 148.4 acres of the on-site wetlands. According to the Clean Water Act (CWA) Section 404(b)(1) Guidelines

and February 6, 1990, Memorandum of Agreement between the U.S. Army Corps of Engineers (Corps) and EPA in determining mitigation, an applicant must demonstrate avoidance and minimization of wetland impacts before compensatory mitigation can be considered. Specifically, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. Practicable alternatives include activities which do not involve the discharge of dredged or fill material into waters of the United States.

The applicant's proposed mitigation consists of the on-site preservation of 753.4 acres of freshwater wetlands and 171.7 acres of adjacent uplands. Since avoidance and minimization have not been adequately demonstrated, it is premature for EPA to consider any type of mitigation plan. In the event that avoidance and minimization are demonstrated in the future, EPA requests that the applicant provide the following information in order to demonstrate that the on-site mitigation proposed is appropriate to offset project impacts.

a. Detailed mitigation and maintenance plan;
b. The responsible party for the long-term management of the mitigation area;
c. Assurance for the long-term protection of the mitigation area (such as a perpetual conservation easement);
d. Detailed performance standards to achieve mitigation success;
e. Detailed monitoring requirements;
f. Detailed long-term management plan;
g. Detailed adaptive management plan;
h. Documented financial assurance to insure the mitigation site is maintained in perpetuity; and
i. Detailed description of the net benefit the proposed mitigation will provide to the environment.

EPA requests that the Corps have the applicant provide this office with the Uniform Mitigation Assessment Method (UMAM) scores for the proposed impact and mitigation sites. The UMAM scores should also include an explanation of how scores were determined based on existing and post project conditions.

Based on the above observations, EPA has determined that the project, as currently proposed, does not comply with the Section 230.10(a) of the 404(b)(1) Guidelines. EPA finds this project may have substantial and unacceptable adverse impacts on ARNI. Therefore, we recommend denial of the project, as currently proposed. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, paragraph 3(a) regarding Section 404(q) of the CWA.

Thank you for providing an opportunity for EPA to comment on this authorization. We look forward to receiving more information from you. Please copy EPA if the permit and statement of findings are issued for this project. If you should have any questions, please contact

Ron Miedema at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 or by telephone at 561-616-8741.

Sincerely,

James D. Giattina
Director
Water Protection Division

cc: FWS, Vero Beach, FL (Paul Souza)
NMFS, West Palm Beach, FL (Jocelyn Karazsia)

Reference:

U.S. Fish and Wildlife Service, 1999, *South Florida Multi-Species Recovery Plan*. Southeast Region, Atlanta, Georgia.